

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular

Meeting Date: Aug 27, 2015

Action Requested By: Engineering

Agenda Type: Resolution

Subject Matter:

Land Lease Agreement between the City of Huntsville and Timothy S. Beddingfield

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Land Lease Agreement between the City of Huntsville and Timothy S. Beddingfield for the Lease of Farm Land on Martin Road adjacent to the City's Water Pollution Control Department

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Land lease agreement in the amount of \$5,000.00 (rate of \$1,000 per annum for a period of five years) for approx. seventy (70) acres of unimproved land adjacent to the City's Water Pollution Control Department. Land will be used for agricultural purposes. Income to be credited to Acct. No. 02-0000-3077-0000 & Munis Account No. 6000-76-76100-515460-000000000-000000

Associated Cost: _____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS: _____

Department Head: 

Date: 8/18/15



ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Engineering

Council Meeting Date: 8/27/2015

Department Contact: Lynn Majors

Phone # 256-427-5201

Contract or Agreement: Land Lease Agreement

Document Name: Beddingfield Land Lease Agreement

City ^{Revenue} ~~City~~ Obligation Amount: \$1,000.00

Total ^{Revenue} ~~Project~~ Budget: \$5,000.00

Uncommitted Account Balance: 0

Account Number: 02-0000-3077-0000 & Munis Acct No.
6000-76-76100-515460-00000000-000000

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating	<i>Kathy Mark</i>	<i>8/18/15</i>
2) Legal	<i>David G. Galt</i>	<i>8/18/15</i>
3) Finance	<i>Paul</i>	<i>8/20/15</i>
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 15-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a lease between the City of Huntsville and Timothy S. Beddingfield, Lessee, whereby the City will rent and lease approximately seventy (70) acres of unimproved land located adjacent to the City's Water Pollution Control Department, to be used for agricultural purposes, said lease being substantially similar in words and figures to that certain document attached hereto and identified as "Land Lease Agreement Between the City of Huntsville and Timothy S. Beddingfield", and consisting of seven (7) pages, and the date of August 27, 2015, appearing on the margin of the first page, together with the signature of the President of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 27th day of August, 2015.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 27th day of August, 2015.

Mayor of the City of Huntsville,
Alabama

**LAND LEASE AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE AND
TIMOTHY S. BEDDINGFIELD**

**LAND LEASE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND
TIMOTHY S. BEDDINGFIELD**

THIS AGREEMENT made, entered into and executed, in duplicate, by and between the City of Huntsville, a municipal corporation within the State of Alabama, hereinafter referred to as "City", and Timothy S. Beddingfield, hereinafter referred to as "Lessee".

City hereby rents and lets to Lessee and Lessee hereby takes and leases from City the lands hereinafter described upon the terms and conditions hereinafter set forth:

1. **The Property:** Approximately seventy (70) acres of unimproved land described in Exhibit A attached hereto and incorporated herein as fully as if appearing herein, generally described and located as follows:

Madison County Tax Assessor Parcel Number 17-07-26-0-000-004.000, generally described as lying adjacent to and along the North margin of Martin Road and being 14 acres off the West side of the Southeast quarter of the Northeast quarter and the Southwest quarter of the Northeast quarter and 15.85 acres in the South half of the Northwest quarter of the Northeast quarter of Section 26, Township 4, Range 1 West, Huntsville, Madison County, Alabama. (Also see Exhibit A hereto)

2. **Term:** The term of this Agreement shall be for a period of five (5) years or 60 consecutive months commencing on the 1st of July, 2016, and expiring on the last day of the same month in 2021, unless sooner terminated or extended in accordance with the terms and conditions herein set forth.
3. **Extended Term:** Subject to the provisions of paragraphs 4 and 5, of this Lease Agreement, Lessee may extend this Lease for successive additional sixty (60) month terms upon giving written notice to City no less than thirty (30) days prior to the end of the then current terms.
4. **Right to Terminate:** City and Lessee reserve the right to terminate this Agreement at any time upon one hundred twenty (120) days written advance notice to Lessee if the Lessee has not met all the requirements of this lease, if the property is sold, or if the City needs the property for any reason other than for the purposes outlined herein for the Lessee.
5. **Rights Reserved:**
 - A. **Early Termination:** It is understood and agreed that this Property is owned by the City for development and that the lease of it for agricultural and/or pasture purposes is secondary to the development purpose. The City reserves the right to show the Property at any time to prospective purchasers or tenants, to permit perspective purchasers or tenants to come upon the land to conduct such tests as it deems fit to determine the suitability of the land for its purposes, and to terminate this lease as to any or all of the land so leased at any time upon written notice to the Lessee in accordance with paragraph 4 above. Provided, however, that City shall take all reasonable precautions to safeguard Lessee's livestock and avoid damage to improvements made by Lessee and any growing or planted crops. If all or any portion of the Property is sold or leased by the City during the term of this Lease, the rent due under the Lease will be reduced on a pro rata basis according to the number of

**_____
President of the City Council of the City
of Huntsville, AL
Date: August 27, 2015**

acres withdrawn. Lessee has first right of refusal to purchase, if the Property is to be sold, and under the same terms and conditions as a potential buyer.

- B. **Ingress-Egress:** City reserves a vehicular and pedestrian easement and right-of-way over the part of the Property described as follows:

All that part of the NE ¼ of Section 26 Twp. 4S Range 1 W, of the Huntsville Meridian Madison County, Alabama, more particularly described as follows:

Begin at a point located at Alabama State Plane Coordinate East Zone Values of North: 1517151.75, and East: 425152.90; thence run South 01°45' 32" West a distance of 2495.9 feet to a point located at Alabama State Plane Coordinate East Zone Values of North: 1514657.04, and East: 425076.29 and the end of said easement. Easement is to lie 12.5 feet on either side of herein described line.

6. **Rent:** Lessee agrees to pay rent to the City in the sum of ONE THOUSAND AND NO/100 (\$1,000.00) DOLLARS per annum. All rent shall be payable in advance on or before the 10th day of January, and is due without demand, set-off or deduction of any kind. Any rental payment received by City more than ten (10) days after the due date shall be assessed a late charge in the amount of FIFTY AND NO/100 (\$50.00) DOLLARS.
7. **Use of Property:** The Property shall be used for the shelter, care and pasturing of livestock, and related purposes only, and shall be subjected to the following additional terms and conditions:
 1. Lessee agrees to conduct all activities on the Property in an efficient, economic, safe and careful manner.
 2. Lessee shall cut no timber, conduct no mining operations nor remove any soil or other natural substances from the Property other than weeds, bushes and similar wild growth interfering the Lessee's use of the Property.
 3. Lessee shall allow no unlawful, improper, or otherwise offensive use of the Property, nor commit or permit waste or damage to the Property nor commit or permit any nuisance to exist on the Property. Lessee shall strictly comply with all applicable rules, regulations, laws, administrative orders and ordinances of the City of Huntsville, County of Madison, State of Alabama, the United States and any other governmental agency having jurisdiction regarding use of the Property.
 4. Lessee shall not make, construct, or install any improvements to or make any alterations to or on the Property without the advance written consent of the City. Lessee shall not construct or install any fuel tanks on the Property, whether permanent or temporary, whether above or below ground, under any circumstances. Any approved additions, improvements, or alterations shall become the property of the City upon termination of this Agreement, unless the City gives written approval for Lessee to retain such improvements, in which case Lessee shall promptly remove such improvements at the end of the lease term and shall repair any damages caused by such removal.
 5. Lessee may construct shelters for livestock on the Property. The shelters will remain the property of the Lessee and may be removed at the end of the lease. All clean up

associated with removal will be the responsibility of the Lessee. Fencing nor or hereafter existing shall remain with the Property.

8. **Maintenance:** it shall be the responsibility of Lessee to:

1. Maintain the Property and conduct all operations in strict compliance with all governmental regulations and federal, state, county and municipal statutes, laws, ordinances and rules in effect during the term of this Agreement.
2. Keep the Property in an orderly condition and free from debris, weeds and brush which would be detrimental to efficient farming operations.
3. Insure that no mechanic's, materialmen's or other liens are placed against the Property for labor or materials furnished or supplied at Lessee's request.
4. Use every reasonable means to prevent soil erosion on the Property. In the event that City determines that the Property is not being properly maintained, in accordance with the provisions of this Agreement, it shall notify Lessee of the deficiency. Lessee shall perform the required maintenance, at Lessee's sole expense. In the event the maintenance is not satisfactorily performed within thirty (30) days of receiving the notice, or in event such maintenance is not capable of being performed within said period and Lessee has not begun such maintenance and is not pursuing completion with due diligence, then the City may, in addition to all other rights or remedies provided herein, enter the Property and perform the maintenance. Lessee agrees to reimburse the City for the reasonable cost of all such maintenance immediately upon demand.

9. **Condition of the Property:** Lessee acknowledges that Lessee has thoroughly inspected the condition of the Property, and accepts the same in its AS IS condition. This Agreement is made without any representations or warranties by the City as to the condition of the Property and without obligation of the city to make any changes or alterations to the Property. Lessee expressly assumes sole liability for any and all accidents, loss, cost or damage alleged to have been caused by the condition of the Property.

10. **Environmental Matter:** Lessee agrees to strictly comply with all applicable governmental regulations and federal, state, county and municipal statutes, laws, rules, orders or ordinances, as now exists or may hereafter be adopted concerning protection of the environment. It is an express condition of this Agreement that Lessee shall comply with all rules and regulation of the Environmental Protection Agency, the Alabama Department of Environmental Management, the Department of Agriculture, and any other authority of competent jurisdiction regarding operations on the Property and reporting and clean-up of any spills, emissions, discharges, leaks or releases causing contamination of the environment. Lessee hereby indemnifies and holds the City harmless from and against any and all liability, including fines, suits, claims, loss, costs, damage, liens, expenses, judgments and causes of action of every kind resulting from pollution, emissions, leaks, discharges, releases, escapes or spills resulting from the activities, operations or omissions of Lessee, the employees, independent contractors or agents of Lessee in connection with the operation on the Property; including, but not limited to, costs of any required clean up, abatement or environmental remediation. This obligation on the part of the Lessee shall survive the expiration or earlier termination of this Agreement.

Lessee shall not, nor will Lessee permit, any third parties to discharge, dispose, dump or release any hazardous substance or waste on or under the Property. The use of pesticides

and herbicides, which have been approved by the appropriate regulatory agency, shall not be considered as hazardous substances, when used in accordance with approved application procedures.

11. **Security Deposit:** No security deposit shall be required upon commencement of the lease term. In the event of default by Lessee of any provision of this Agreement, the City reserves the right to institute a reasonable security deposit requirement as a condition of continuing the Lease.
12. **Taxes, Assessments and Utilities:** The City shall be responsible for payment of any property taxes or general assessments which may be levied on or assessed against the Property. Lessee shall be responsible for the payment of all taxes levied against Lessee's personal property and taxes attributable to Lessee's use of or income from the Property. Lessee shall be responsible for payment of utility charges, if any.
13. **Sublease:** Lessee shall not sublease or encumber the Property nor any portion thereof under any circumstance. Use of the Property, by anyone other than Lessee constitutes a sublease. Any attempted sublease or assignment of Lessee's interest in this Agreement constitutes an event of default on the part of the Lessee and gives the City the right to terminate this Agreement immediately upon notice to Lessee.
14. **Default:**
 1. In the event of Lessee's breach of any provision of this Agreement, the City shall give Lessee written notice of default. In the event the default is not corrected within ten (10) days from the date of such notice, then the City shall have the right to terminate this Agreement or terminate Lessee's right to conduct operations on the Property. Upon termination of this Agreement or upon termination of Lessee's right to conduct operations at the Property, Lessee agrees to promptly remove any and all equipment and vacate the Property without further demand.
 2. Lessee agrees to pay the City's reasonable attorneys' fees and all costs of legal proceedings if it becomes necessary for the City to employ an attorney or legal process to collect any amounts due hereunder, to remove any equipment from the Property, to restore the Property to the condition it was in upon commencement of the Agreement or to enforce any provisions of this Agreement upon default by Lessee.
 3. An assignment for the benefit of creditors, the appointment of a receiver, any proceedings in bankruptcy, whether voluntary or involuntary, or any act of Lessee's insolvency shall be deemed a breach of this Agreement.
 4. Upon default by lessee, the City may elect to exercise any of the remedies provided by this Agreement, individually or cumulatively, or may elect to assert such other remedies as are available in equity or at law.
15. **Insurance:**
 - A. Lessee shall, within thirty (30) days from the date of this Agreement and at Lessee's sole expense, procure and maintain during the term of this Agreement comprehensive public liability insurance in a minimum amount of ONE MILLION AND NO/100 (\$1,000,000.00)

DOLLARS per injured person, to a maximum of TWO MILLION AND NO/100 (\$2,000,000.00) DOLLARS for a single incident.

- B. The City and its councilmen, officers, employees and agents shall be named as additional insureds on the policy. The insurance carrier shall be required to send a certificate of insurance to the City, and give the City thirty (30) days advance written notification of any cancellation or modification to the policy.
 - C. It is understood and agreed by Lessee that the City is not responsible for the loss of or damage to any of Lessee's equipment or personal property, nor does the City's insurance cover such loss or damage. Lessee is encouraged to procure and maintain sufficient insurance to protect Lessee's property against any loss or damage.
16. **Indemnification:** Lessee, the heirs, personal representatives and assigns of Lessee, shall indemnify and hold the City and its councilmen, officers, employees and agents harmless from and against any and all liability, including fines, suits, judgments, claims, loss, costs, damage, lines, expenses and causes of action of every kind resulting from Lessee's use of or presence on the Property, or arising out of or in connection with Lessee's or any third party's operations, activities, omissions pursuant to this Agreement. Lessee and their heirs, personal representative and assigns of Lessee, shall indemnify and hold the City and its councilmen, officers, employees and agents, harmless from and against any and all liability for injury, disability or death to persons, for damage to or loss of property, resulting from Lessee's, or any third party's operations, activities, or omissions pursuant to this Agreement. This indemnification shall include the cost of defense of any suit or claim including court costs and reasonable attorneys' fees.
17. **Security and Damage:** The City assumes no responsibility or liability for damage to the Property crops or livestock from any cause whatsoever. The city assumes no responsibility for the security of the Property or any improvements or equipment thereon, nor for the safety of Lessee's employees, independent contractors or agents. Lessee assumes full responsibility and risk of loss for all improvements and equipment on the Property and for the safety of all persons and equipment utilized in the operations of Lessee.
18. **Relationship of the Parties:** Nothing contained herein shall be deemed or construed as creating a partnership, joint venture or agency relationship between the parties. Neither party shall have the right or authority to bind the other.
19. **Right to enter:** The City reserves the right to enter the Property at all reasonable times, to inspect the Property, to perform tasks, surveys, etc., or at any time in the event of emergency. The City will endeavor to limit entry to reasonable hours. Lessee shall have no claim against the City for interference with Lessee's interest during such periods of inspection.
20. **Joint and Several Liability:** Each individual Lessee executing this Agreement hereby assumes individual as well as joint liability for the full and faithful performance of all provisions of this Agreement.
21. **Waiver:** The City's waiver of default by Lessee of any provision of this Agreement shall not operate as a waiver of subsequent defaults by Lessee.

22. **Integration:** This Agreement is the entire agreement between the parties, and cannot be altered or amended except in writing and signed by both parties.
23. **Binding Effect:** The rights and obligations of this Agreement shall extend to and be binding upon the parties and their heirs, personal representatives, successors and assigns. However, this section shall not be construed as giving Lessee the right to assign this Agreement.
24. **Assignment:** Lessee shall not assign or transfer this Agreement, sublet any portion of the Property or permit any part of the Property to be used by anyone other than the Lessee.
25. **Construction:** This Agreement shall be construed under, and in accordance with, the laws of the State of Alabama. In the event any provisions of this Agreement are held to be invalid, illegal or unenforceable in any respect, by a court of competent jurisdiction, the remaining portion of this Agreement shall continue in full force and effect.
26. **Notice:** All payments and written notices required by this Agreement, unless otherwise provided, shall be mailed to the City at the following address:

City of Huntsville
Real Estate Department
P.O. Box 308
Huntsville, Alabama 35804-0308
Attention: Kelly Davis

All notices required by this Agreement unless otherwise provided, shall be mailed to Lessee at the following address:

Mr. Timothy S. Beddingfield
2126 Metro Circle SW
Huntsville, Alabama 35801

IN WITNESS WHEREOF, Timothy S. Beddingfield, as Lessee, and the City of Huntsville, a municipal corporation, acting by and through Tommy Battle, as Mayor, and Charles E. Hagood, as Clerk-Treasurer of the City of Huntsville, Alabama, have hereunto set their hands and affixed the seal of the City of Huntsville and attested the same as and for the official act of said municipal corporation in accordance with their duly constituted authority as such Mayor and Clerk-Treasurer as heretofore authorized by the City Council of the City of Huntsville, Alabama, on this the _____ day of _____, 2015.

LESSEE:

LESSOR:

CITY OF HUNTSVILLE, a municipal corporation
in the State of Alabama

ATTEST:

By: _____
Charles E. Hagood
City Clerk-Treasurer

By: _____
Tommy Battle
Mayor